

1:02CV1753

JS 44 (N.D. Ohio)

## Civil Cover Sheet

The JS-44 Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Please refer to the instructions on page 2.

## 1. (a) PLAINTIFFS

OVERDRIVE, INC.

## DEFENDANTS

MEDIABAY.COM, INC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Cuyahoga  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEY'S NAME (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Lester S. Potash  
55 Public Square, 1717  
Cleveland, OH 44113(216)771-8400  
lspotash@earthlink.net

ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION (PLACE A CHECK IN ONE BOX ONLY)

 1 U.S. Government Plaintiff 3 Federal Question (U.S. Gov't Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(PLACE A CHECK IN ONE BOX FOR PLAINTIFF AND IN ONE BOX FOR DEFENDANT)

PTF

DEF

PTF

DEF

Citizen of this State  1  1 Incorporated or Principal  4  4 Place of Business in this StateCitizen of another State  2  2 Incorporated and Principal  5  5 Place of Business in another StateCitizen or Subject of a  3  3 Foreign Nation  6  6 Foreign Country

## IV. ORIGIN

(PLACE A CHECK IN ONE BOX ONLY)

Appeal to District

Judge from  
Magistrate

1 Original  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Magistrate Judgment

## V. NATURE OF SUIT

Please click on the appropriate nature of suit

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Overpayment Recovery & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excluding Veterans) 153 Recovery of Overpayment of Vet's Benefits 160 Stockholders Suits 190 Other Contract 195 Contract Prod. Liability	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel, Slander 330 Federal Employer's 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Pers. Injury	PERSONAL INJURY 362 Personal Injury-Med. Malpractice 365 Personal Injury-Product Liability 388 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC § 881 630 Liquor Laws 640 Railroad & Truck 650 Airline Regulations 660 Occupational Safety/Health 690 Other	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157  <b>PROPERTY RIGHTS</b> 820 Copyrights 830 Patent 840 Trademark  <b>LABOR</b> 710 Fair Labor Standards Act 720 Labor/Management Relations 730 Labor/Management Reporting and Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation  <b>SOCIAL SECURITY</b> 881 HIA (1395f) 882 Black Lung (923) 883 DIWC/DIWW (405(g)) 884 SSDI Title XVI 885 RSI (405(g))
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	791 Employee Retirement Income Security Act (ERISA)	  <b>FEDERAL TAX SUITS</b> 870 Taxes (U.S. Plaintiff or Del.) 871 IRS-Third Party 26 USC § 7609
210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectm't 240 Tort to Land 245 Tort Product Liability 290 All Other Real Prop.	441 Voting 442 Employment 443 Housing/ Accommodations 444 Welfare 446 Other Civil Rights	510 Motions to Vacate Sentence HABEAS CORPUS: - 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Conditions		900 Constitutionality of State Statute 990 Other Statutory Actions  <i>636557</i>

VI. CAUSE OF ACTION (Cite the U.S. civil statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statute unless this is a diversity action)  Dec.judg.det.non-infring.pat.28USC1338(a),28USC2201;Sup.Juris state claim 28USC1367(a)VII. REQUESTED IN COMPLAINT:  Check if this is a Fed. R. Civ. P. 23 Class Action DEMAND: \$ 10,000,000.00 CHECK YES ONLY IF DEMANDED IN COMPLAINT: JURY DEMAND:  YES  NOVIII. RELATED CASE(S)  
IF ANY (SEE INSTRUCTIONS) JUDGE DOCKET NUMBER

SEP - 5 2002

Date

Signature of Attorney of Record

FOR CLERK'S OFFICE USE ONLY

RECEIPT NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

JUDGE \_\_\_\_\_

MAGISTRATE JUDGE \_\_\_\_\_

E25741

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO**

**I.**

Civil Categories: (Please check one category only).

1.  General Civil
2.  Administrative Review/Social Security
3.  Habeas Corpus Death Penalty

\*If under Title 28, §2255, name the SENTENCING JUDGE:

CASE NUMBER: \_\_\_\_\_

**II.**

**RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action is  RELATED to another PENDING civil case. This action is  REFILED pursuant to LR 3.1.

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

**III.**

In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

**COUNTY:**

**Corporation** For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

**COUNTY:** Cuyahoga

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

**COUNTY:**

**IV.** The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

**EASTERN DIVISION**

AKRON  
 CLEVELAND  
 YOUNGSTOWN

(Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)  
 (Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)  
 (Counties: Columbiana, Mahoning and Trumbull)

**WESTERN DIVISION**

TOLEDO

(Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Wood and Wyandot)